



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-1065]

RIN 1625-AA09

Drawbridge Operation Regulation; Sabine River, near Ruliff,  
LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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**SUMMARY:** The Coast Guard is removing the existing drawbridge operation regulation for the Kansas City Southern (KCS) Railroad drawbridge across Sabine River, mile 36.2, between Newton County, TX and Calcasieu Parish, LA. The drawbridge was converted to a fixed bridge in 2012 and the operating regulation is no longer applicable or necessary.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG-2012-1065. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the

"SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Jim Wetherington, Bridge Administration Branch, Coast Guard; telephone 504-671-2128, e-mail james.r.wetherington@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause

exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Kansas City Southern Railroad Bridge over the Sabine River, mile 36.2, that once required draw operations in 33 CFR 117.493 (b), was converted to a fixed bridge in 2012. Therefore, the regulation is no longer applicable and shall be removed from publication. It is unnecessary to publish an NPRM because this regulatory action does not purport to place any restrictions on mariners but rather removes a restriction that has no further use or value.

Under 5 U.S.C. 553(d)(1), a rule that relieves a restriction is not required to provide the 30 day notice period before its effective date. This rule removes the Kansas City Southern (KCS) Railroad Bridge over the Sabine River, mile 36.2, draw operation requirements under 33 CFR 117. 493 (b), thus removing a regulatory restriction on the public. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the Federal Register. The bridge has had an operation regulation that states the bridge "need not open" since 1992. At that time, the bridge was rendered effectively fixed with the removal of all operations equipment associated with that bridge by KCS. The bridge has been a fixed bridge for one

year and this rule merely requires an administrative change to the Federal Register, in order to omit a regulatory requirement that is no longer applicable or necessary.

#### B. Basis and Purpose

The KCS Railroad Bridge across the Sabine River, mile 36.2, was converted to a fixed bridge in 2012 after 20 years of not being required to open, by regulation, and being effectively fixed with the removal of all operations equipment by the owner. It has come to the attention of the Coast Guard that the governing regulation for this drawbridge was never removed subsequent to the conversion of the existing bridge to a fixed bridge. The conversion of this drawbridge necessitates the removal of the parts of the drawbridge operation regulation, 33 CFR 117.493 (b), that are pertaining to the former drawbridge.

The purpose of this rule is to remove the parts of the paragraph of 33 CFR 117.493 (b) that refer to the KCS Railroad Drawbridge at mile 36.2, from the Code of Federal Regulations since it governs a bridge that is no longer able to be opened.

#### C. Discussion of Rule

The Coast Guard is changing the regulation in 33 CFR 117.493 (b) by removing restrictions and the regulatory burden related to the draw operations for this bridge that

is no longer a drawbridge. The change removes the part of the paragraph of the regulation governing the KCS Railroad Bridge, mile 36.2, since the bridge has been converted to a fixed bridge. This Final Rule seeks to update the Code of Federal Regulations by removing language that governs the operation of the KCS Railroad Bridge, mile 36.2, which in fact is no longer a drawbridge. This change does not affect waterway or land traffic. This change does not affect nor does it alter the operating schedules in 33 CFR 117.493 (a), the remainder of 33 CFR 117.493 (b) that governs the remaining active drawbridge listed in this paragraph nor the remaining active drawbridges on the Sabine River.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of

Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard does not consider this rule to be "significant" under that Order because it is an administrative change and does not affect the way vessels operate on the waterway.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will have no effect on small entities since this drawbridge has been converted to a fixed bridge and the regulation governing draw operations for this bridge is no longer applicable. There is no new restriction or regulation being imposed by this rule; therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule

will not have a significant economic impact on a substantial number of small entities

### 3. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### 4. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### 5. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

## 6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

## 7. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

## 8. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

## 9. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health



Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

10. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

11. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

12. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and

Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the removal of the parts of the paragraph of 33 CFR 117.493 (b) that refer to the KCS Railroad Drawbridge at mile 36.2, from the Code of Federal Regulations since it governs a bridge that has been converted to a fixed bridge. This rule is categorically excluded, under figure 2-1, paragraph (32) (e), of the Instruction.

Under figure 2-1, paragraph (32) (e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of  
Homeland Security Delegation No. 0170.1.

2. Revise § 117.493(b) to read as follows:

§ 117.493 Sabine River.

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(b) The draw of the S12 Bridge, mile 40.8, at Starks, need  
not be opened for the passage of vessels.

Dated: January 31, 2013.

Roy A. Nash

Rear Admiral, U. S. Coast Guard

Commander, Eighth Coast Guard District

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